

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BARNEY VINCE RUSSO,

Plaintiff,

vs.

CLEARWIRE US, LLC, et al.,

Defendants.

Case No. 2:12-cv-01831-PMP-VCF

ORDER

(Reqst Excuse ENE - Dkt. #33)

Before the court is Defendants' Request to Excuse Attendance or for Telephonic Appearance at Early Neutral Evaluation Session (Dkt. #33). The court has reviewed the Request, and Plaintiff's Response (Dkt. #34).


Defendants request that their insurance representative be excused from attending the ENE session currently scheduled for January 31, 2013, at 1:30 p.m., because the Clearwater Defendants have \$75,000 deductible which is unlikely to be reached because Plaintiff was a part time employee and the economic damages at issue are under \$19,000. Michelle Marchant, Associate General Counsel, Labor and Employment, will be present at the ENE session and has binding authority on behalf of the Clearwater Defendants.

Plaintiffs oppose the request arguing that Plaintiff was only a part-time employee because of the Defendants' wrongful conduct. Additionally, considering the replacement value of lost benefits, Plaintiff's regular bonuses and overtime pay, compensatory damages, and the possibility of the award of punitive damages, a jury award could easily exceed the \$75,000.00 deductible. Plaintiff also argues that exempting the insurance representative from the ENE process would effectively pre-judge Plaintiff's potential damages and undercut the entire purpose of the ENE session.

1 As Defendants' insurance representative works in New York, and the court was unable to get to
2 this request until today, the request will be granted. However, Defendants' insurance representative
3 shall be available telephonically for the duration of the conference without regard to the time difference
4 and whether the ENE is ongoing after the representative's normal work hours.

5 **IT IS ORDERED** that Defendants' Request to Excuse Attendance or for Telephonic
6 Appearance at Early Neutral Evaluation Session (Dkt. #33) is **GRANTED** in that the insurance
7 representative need not be physically present, but shall be available telephonically for the duration of
8 the ENE.

9 Dated this 29th day of January, 2013.

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12 Peggy A. Leon
13 United States Magistrate Judge
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